Home Office

AUTHORITY: The Secretary of State for the Home Department

Schedule J – Dispute Resolution Procedure

Travel Services

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PART 1.

1. SCOPE

1.1 In accordance with Clause 55 (*Dispute Resolution*) of the Contract, all Disputes shall be determined in accordance with the provisions of this Schedule J *(Dispute Resolution Procedure)*.

2. NEGOTIATION AND ESCALATION

2.1 Subject to paragraph 4 of this Part 1, the Dispute shall first be referred by notice in writing to named representatives of the Parties who shall meet and endeavour to resolve the Dispute by negotiation. If these representatives fail to reach agreement, then the Dispute shall be escalated to suitably empowered senior representatives within each Party's organisation.

3. ALTERNATIVE DISPUTE RESOLUTION (ADR)

3.1 If the Dispute is not so resolved within 28 calendar days of receipt of the notice referred to in paragraph 2 above, or at any other time, the Parties may seek to resolve the Dispute amicably by using the following procedure:

3.1.1 Either Party may submit the Dispute to a Neutral Adviser appointed by agreement between the Parties to assist them in resolving the Dispute (the "Neutral Adviser"). Either Party may give written notice to the other proposing the name of a suitable person to be appointed. If no such person is appointed within 14 days after such notice is given either Party may request the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU, United Kingdom to appoint a Neutral Adviser acceptable to both Parties.

3.1.2 Following such appointment, the Parties shall, with the assistance of the Neutral Adviser, seek to resolve the Dispute by using an alternative dispute resolution procedure (the "ADR Procedure") agreed between the Parties or, in default of such agreement, established by the Neutral Adviser.

3.1.3 if the Parties accept any recommendations made by the Neutral Adviser or otherwise reach agreement as to the resolution of the Dispute, such agreement shall be recorded in writing and signed by the Parties (and, if applicable, the Neutral Adviser), whereupon it shall become binding upon the Parties.

3.2 In the event that the Dispute is referred to expert determination in accordance with paragraph 4 of this Part 1, then:

3.2.1 any Neutral Adviser involved in the ADR Procedure shall not take part in the determination, whether as a witness or otherwise, and any recommendations made by him in connection with the ADR

3.2.2 procedure, shall not be relied upon by either Party without the consent of the other Party and the Neutral Adviser; and

3.2.3 neither Party shall make use of or rely upon information supplied, or the arguments raised, by the other Party in the ADR Procedure.

3.3 The costs and fees associated with the ADR Procedure shall be borne equally by the Parties.

4. EXPERT DETERMINATION

4.1 If the Dispute is not resolved in accordance with paragraph 2 of this Part 1, either Party may at any time notify the other of an intention to refer a Dispute to an expert (the "Expert") under the procedure set out in Part 2 (Procedure for Expert Determination) (an " Expert Determination "). The Expert shall act impartially and shall not act as an arbitrator. The Expert shall perform his duties and reach his decision in accordance with the terms of this Contract and the applicable law.

4.2 The Expert's decision shall be final and binding unless and until the Dispute is finally resolved by agreement, and both Parties shall give effect forthwith to the Expert's decision unless and until the decision is resolved by agreement.

4.3 The Expert's decision shall be enforceable in the courts of England.

4.4 Either Party may apply to the courts of England to enforce the Expert's decision. Nothing in this paragraph shall prevent either Party at any time seeking any interim declaratory or interlocutory relief in connection with enforcement proceedings including proceedings to enforce an Expert's award.

4.5 The Expert shall have full power to open up, review and revise any endorsement, decision, opinion, instruction, approval, finding, recommendation or determination made, notice or certificate given by any representative of the Authority related to the Dispute provided that the Expert shall have no such power in circumstances where the Contract specified that the decision or the opinion of the Authority is final and binding.

5. CONFIDENTIALITY

5.1 Subject to paragraph 5.2 of this Part 1 the Parties, the Neutral Adviser, the Expert and the Expert's appointed advisers shall keep the fact that:

5.1.1 any negotiation pursuant to paragraph 2 above;

5.1.2 any ADR Procedure conducted pursuant to paragraph 3 above; and

5.1.3 any Expert Determination pursuant to paragraph 4 above

is taking place and the outcome of any such procedure (the "Confidential Procedure") confidential. All documentation, information, data, submissions and comments disclosed whether in writing or otherwise by either Party, the Neutral Adviser, the Expert for the purposes of the Confidential Procedures either in connection with or in consequence of any Confidential Procedure shall be regarded and treated as confidential.

5.2 Notwithstanding any of the provisions of this paragraph 5, nothing herein shall apply to information which is publicly available (other than where it is made available as a result of a breach of the Contract), nor prevent disclosure of

any information by either Party, such Neutral Adviser, Expert or any of their respective advisers of this Part 1, to the extent required by law or any regulatory or tax authority including the rules of any recognised securities exchange.

6. DISPUTES RELATING TO CORRUPT GIFTS AND PAYMENTS

6.1 In the case of a Dispute which either Party wishes to refer to dispute resolution pursuant to Clause 35 (*Corrupt Gifts and Payments*) (other than in respect of Clause 35.3, either Party shall notify the other Party in writing of its intention to refer the dispute to arbitration before a sole arbitrator appointed in accordance with the terms of this paragraph. The sole arbitrator shall be a practising Queen's Counsel (the "Arbitrator") who shall be nominated by the Chairman of the Bar Council, or in his absence or unavailability the Vice-Chairman, within 28 days of the Party wishing the appointment to be made making a request in writing to the Chairman of the Bar Council, whose decision shall be final and binding. The Arbitrator shall determine any issue impartially on the balance of probabilities.

6.2 The Arbitrator shall have the power, where appropriate, to order financial compensation to be paid by one Party to the other or to adjust the terms of, or the amounts payable under, the Contract.

6.3 The Arbitrator shall determine the dispute in accordance with the laws of England and Wales.

6.4 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

6.5 The Arbitrator shall deliver his decision on any matter referred to him within 28 days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months (or such other period as the Parties may agree) of his appointment.

6.6 The Parties agree to prosecute any such reference properly and expeditiously and to do all things or take all steps reasonably necessary in order to enable the Arbitrator to deliver any award (interim, final or otherwise) as soon as is reasonably practicable and in any event no later than the time limit set out in this clause.

6.7 The Arbitrator's decision shall be in writing and shall state his reasons for his decision.

6.8 The costs of the arbitration shall be borne as to one half by the Authority and as to one half by the Contractor or, if the Arbitrator considers any other apportionment to be fair and reasonable in the circumstances, as the Arbitrator shall specify.

6.9 Unless and until revised, overturned or varied by the Court the Arbitrator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

PROCEDURE FOR AN EXPERT DETERMINATION

1. REFERENCE OF A DISPUTE TO EXPERT DETERMINATION

1.1 Either Party may, at any time, give notice (the "**Expert Determination Notice**") to the other Party of its intention to refer a Dispute to Expert Determination. The Expert Determination Notice shall set out:

1.1.1 the nature and a brief description of the Dispute;

1.1.2 the names and addresses of the Parties involved; and

1.1.3 the nature of the relief sought.

2. APPOINTMENT OF THE EXPERT

2.1 The Expert shall be selected by agreement between the Parties within nine (9) days of service of the Expert Determination Notice.

2.2 If no agreement is reached within such time the Party referring the Dispute to Expert Determination shall apply for the appointment of an Expert to the Chairman of the Bar Council, or in his absence or unavailability, the Vice-Chairman (the "**Appointor**").

2.3 When requesting the selection of an Expert the referring Party shall supply a copy of the Expert Determination Notice to the Appointor who shall have regard to the nature of the Dispute which is referred for Expert Determination when selecting the Expert. The Expert shall be professionally qualified and suitably experienced in the field in which the Dispute arises. The Appointor shall endeavour to select the Expert within four days of receiving the application and such selection shall be final and binding.

2.4 If the selected Expert is unwilling or unable to accept the appointment or fails to confirm his acceptance of the appointment within seven (7) days of receiving the Expert Determination Notice, another Expert shall be agreed upon by the Parties or selected by the Appointor in accordance with the procedure set out above (and so on until an Expert is appointed).

2.5 The Expert shall be appointed on the terms set out at in Part 3 (*Terms of Appointment of Expert*) or such other terms as the Parties consider appropriate. No such appointment shall be amended or replaced without the written consent of both Parties.

2.6 Unless both Parties otherwise agree no person shall be appointed as an Expert if such a person at the time of appointment is (or within three (3) years

2.7 before such appointment has been made) a director, office holder or an employee of, or is or has been (within such time) personally engaged in providing services or as a consultant to either Party or to any Associated Company (as defined in paragraph 7.2.1 below) of the Contractor or is the holder of shares in either Party or any Associated Company of the Contractor (unless it is a company quoted on a recognised stock exchange and such

shareholding is less than one percent (1%) of the issued share capital (of any class) of the company).

2.8 Any person requested to accept an appointment or who is appointed as an Expert shall, before accepting such an appointment, or at any time thereafter, immediately disclose any interest or duty of which he is or becomes aware of which conflicts or may conflict with his function under such appointment.

2.9 The Expert shall be under a continuing duty to disclose in writing to each Party forthwith any such circumstances which may arise during the currency of the Expert's appointment or any other fact or circumstance which might call into question his impartiality or independence. After such disclosure, if both Parties agree, or if on application by either Party to the Appointor, whose decision is final and binding, and he so decides, the Expert shall forthwith resign and a replacement Expert shall be appointed in accordance with paragraph 2 of this Part 2.

3. PROCEDURE FOR THE EXPERT DETERMINATION

3.1 As soon as possible following agreement upon, or receipt of notification of, the selection of the Expert and, wherever possible, having regard to the date of appointment of the Expert, within seven (7) days of the date of service of the Expert Determination Notice, the Party referring the Dispute to Expert Determination shall send a copy of the Expert Determination Notice and its written statement of case to the Expert accompanied by copies of any documents upon which the Party wishes to rely and, at the same time, shall send a copy of all such materials to the other Party.

3.2 The other Party shall have the right to submit a written response within 30 days of receipt of the documents referred to in paragraph 3.1 of this Part 2, together with copies of any documents upon which he wishes to rely, to the Expert, and shall, at the same time, send a copy of all such materials to the referring Party.

3.3 The Expert shall have full power to take the initiative in ascertaining the facts and the law. In particular, the Expert shall have power to:

3.3.1 request clarification or additional information from either or both of the Parties;

3.3.2 make such site visits and inspections as he considers appropriate;

3.3.3 convene meetings upon reasonable notice to the Parties at which both Parties shall be entitled to be present;

3.3.4 appoint his own advisers to advise on matters of legal interpretation or expertise outside his own area of expertise on which the Parties are not agreed;

3.3.5 make use of his own specialist knowledge; and

3.3.6 issue directions as to the timetable and conduct of the Expert Determination as he sees fit.

Without prejudice to such powers a meeting shall be held at the request of either Party to give both Parties the opportunity to make oral submissions.

3.4 If either Party fails to submit any written statement or respond to any request for clarification or information or fail to attend any meetings convened by the Expert or in any other way fails to comply with a request under this Part 2, the Expert shall proceed with the Expert Determination on the basis of the information supplied by the other Party. Any communications passing between a Party and the Expert shall be copied to the other Party.

4. THE EXPERT'S DECISION

4.1 The Expert shall reach his decision within 28 days of receipt by him of the Expert Determination Notice or such longer period as is agreed by both Parties after the Dispute has been referred to the Expert. The Expert may extend the period of 28 days by up to 14 days with the consent of the Party by whom the Dispute was referred.

4.2 If the Expert fails to reach a decision within the applicable time-frame his appointment shall cease and a replacement Expert shall be appointed in accordance with paragraph 2 of this Part 2.

4.3 The Expert's decision shall be in writing and shall set out the reasons for his decision.

5. COSTS

Each Party shall bear its own costs in relation to any reference of a Dispute to Expert Determination. The reasonable fees, costs and expenses of the Expert in carrying out the Expert Determination shall be borne by the Parties in equal shares.

6. IMMUNITY OF THE EXPERT

The Parties agree that the Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith, and any employee or agent of the Expert shall be similarly protected from liability.

7. INVOLVEMENT IN ARBITRATION PROCEEDINGS

7.1 The Parties agree that the Expert shall not be called as a witness to give evidence concerning any Dispute in respect of which he was appointed Expert in any arbitration proceedings pursuant to the Contract.

7.2 In this Part 2:

7.2.1 "**Associated Company**" means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company which is a Subsidiary of the Holding Company of that relevant company, where Subsidiary and Holding Company have the meaning given to each term in Section 1159 of the Companies Act 2006.

Terms of Appointment of Expert

THESE TERMS OF APPOINTMENT OF EXPERT ARE MADE BETWEEN:

(1) The Secretary of State for the Home Department (the "**Authority**");

(2) [xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx] (the "**Service Provider**"); and

(3) [*name of Expert*] of [*address of Expert*] (the "**Expert**"),

WHEREAS

A. The Authority and the Service Provider (the "**Parties**") have on the [xx] day of [xxxxxxx] 201[x] entered into an agreement for the provision of Travel Services (the "**Contract**").

B. By paragraph 3 of Part 1 to Schedule J (*Dispute Resolution Procedure*) to the Contract provision is made for an Expert to settle, in the first instance, all disputes arising out of or in connection with this Contract (the "**Expert Determination**").

C. The Expert has agreed to serve on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Expert shall act impartially as an independent expert and not as an arbitrator. The Expert shall be under a continuing duty to disclose in writing to each Party any fact or circumstance which might call into question his impartiality or independence and in particular any appointment as director, office holder, any employment or personal engagement in providing services or acting as a consultant to either Party or any Associated Company of either Party or the acquisition of shares in either Party or any Associated Company of either Party (unless it is a company quoted on a recognised stock exchange and such shareholding is less than 1 per cent of the issued share capital (of any class) of the company).

2. The Expert shall decide any dispute referred to him under the Contract and agrees to conduct the Expert Determination in accordance with Clause 55 (*Dispute Resolution*) of the Contract and paragraph 4 of Part 1 and Part 2 of Schedule J (*Dispute Resolution Procedure*) to the Contract and the applicable law.

3. The Expert shall have full power to take the initiative in ascertaining the facts and the law. In particular, the Expert shall have power to:

   3.1.1 request clarification or additional information from either or both of the Parties;

   3.1.2 make such site visits and inspections as he considers appropriate;

   3.1.3 convene meetings upon reasonable notice to the Parties at which both Parties shall be entitled to be present;

3.1.4 appoint his own advisers to advise on matters of legal interpretation or expertise outside his own area of expertise on which the Parties are not agreed; and

3.1.5 make use of his own specialist knowledge.

Without prejudice to such powers a meeting shall be held at the request of either Party to give both Parties the opportunity to make oral submissions.

4. The Expert shall reach his decision within 28 days of receipt by him of the Expert Determination notice or within the time allowed pursuant to Part 2 of Schedule J (*Dispute Resolution Procedure*) to the Contract. The Expert's decision shall be in writing and shall set out the reasons for his decision.

5. Each Party shall bear its own costs in relation to any reference of a dispute to Expert Determination.

6. The Parties shall be jointly and severally liable for the fees and the reasonable costs and expenses of the Expert in carrying out the Expert Determination as follows:

6.1.1 The Expert shall be paid a fee at the [hourly/daily] rate of £[ ] in respect of all time spent upon or in connection with the Expert Determination (including travelling time).

6.1.2 The Expert shall be reimbursed in respect of all disbursements reasonably and properly incurred upon or in connection with the Expert Determination including the cost of secretarial services, telephone calls, courier charges, faxes, travel expenses, hotel and subsistence cost upon production of a receipt in respect of such disbursements.

6.1.3 The Expert shall be paid a fee advance of £ [ ]. The Expert shall be entitled to deliver an invoice in respect of the fee advance immediately following his appointment to each of the Parties in the amount of their respective share. This fee advance shall be deducted from the final statement of any sums due under paragraphs 6.1.1 and 6.1.2 above. If the final statement is less than the fee advance the balance shall be refunded to the Parties.

6.1.4 The Expert [is] [is not] currently registered for VAT.

6.1.5 Where the Expert is registered for VAT it shall be payable at the rate applicable at the date of any invoice.

6.1.6 All payments shall become due 21 days after receipt of the Expert's invoice. Thereafter interest shall be payable at 5% per annum above

6.1.7 the National Westminster Bank plc base rate for every day the amount remains outstanding.

7. The Parties agree that the Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith and any employee or agent of the Expert shall be similarly protected from liability. The Parties undertake to each other and to the Expert that the Expert shall not be called as a witness

to give evidence concerning any Dispute in respect of which he was appointed Expert in any arbitration proceedings pursuant to the Contract.

8. The Parties and the Expert and the Expert's appointed advisers, if any, shall keep the fact that the Expert Determination is taking place and its outcome confidential, and all documentation, information, data, submissions and comments disclosed whether in writing or otherwise by either Party to the Expert (and if necessary its appointed advisers) either in connection with or in consequence of the Expert Determination shall be regarded and treated as confidential (the "**Confidential Material**"). Such Confidential Material shall remain the property of the Party disclosing the same and all copies shall be returned to such Party on completion of the Expert Determination. The obligations of confidentiality do not extend to the Parties or the Expert for the purpose of:

8.1.1 consulting legal advisers in connection with the Dispute;

8.1.2 consulting any expert or technical consultant in connection with the Dispute; or

8.1.3 as otherwise required by law.

Notwithstanding the termination of this Appointment pursuant to clause 9 below or otherwise, the provisions relating to the confidentiality herein, insofar relevant, shall survive.

9. The Expert's appointment shall be terminated on agreement by the Parties:

9.1.1 if he fails to act in accordance with the terms and procedure as set out in this Appointment;

9.1.2 by reason of misconduct of the Expert;

9.1.3 if he is unable for whatever reason to perform his obligations under this Appointment; or

9.1.4 at any time at the joint election of the Parties.

Where the termination of the appointment is due to the default or misconduct of the Expert, the Parties shall not be liable to pay the Expert's fees costs and expenses and any fee advance paid at the date of termination shall be refunded to the Parties within seven (7) days of the date of termination.

10. For all purposes relating to this Appointment the Parties' and the Expert's addresses are as follows:

10.1.1 the Authority:	Head of Commercial Home Office [redacted]
10.1.2 the Service Provider:	[ ]
10.1.3 the Expert:	[ ]

11. This Appointment shall be governed by, and shall be construed in accordance with, the laws of England and Wales.

Signed by, for and on behalf of the **Authority**

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in the presence of: .....

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Signed by, for and on behalf of the **Service Provider**

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in the presence of: .....

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Signed by, for and on behalf of the **Expert**

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in the presence of: .....

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